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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MATTHEW HOGAN,

Plaintiff,

v.

MATTHEW J. WEYMOUTH, et al.,

Defendants.

No. 2:19–cv–02306–MWF–AFMx

OPPOSITION TO BEASLEY'S ANTI-SLAPP MOTION

Hearing: Mon., July 29, 2019, 10:00 a.m.
Before: Hon. Michael W. Fitzgerald

I. INTRODUCTION

A private figure sent another private figure a private text message about a football game. Football is popular. Ergo, Beasley[1] argues, the text message is a matter of public interest under California's anti-SLAPP law. This is not how it works. Whether an issue is public and covered by anti-SLAPP law, or private and not covered, depends on the specific statement giving rise to the plaintiff's claims. Here, Beasley is not being sued for false statements about the Super Bowl or about Patrick Chung's injury. It is being sued for false statements about a private text message. Beasley is not being sued for disclosing

[1] "Beasley" will refer to defendants Beasley Broadcast Group, LLC, and Melissa Eannuzzo together. The defendant named as Beasley Broadcasting Group asserts that its proper name is Beasley Media Group, LLC. If so, Hogan will amend appropriately.

private facts about the Super Bowl or Chung. It is being sued for disclosing a private figure's private text message. The anti-SLAPP law does not protect Beasley's tortious statements on these subjects. Beasley's anti-SLAPP motion therefore must be denied.

II. ARGUMENT

Anti-SLAPP motions are evaluated in two steps. First, the movant must show that its acts underlying the claim were in furtherance of the right of petition or free speech or in connection with a public issue. Civ. Proc. Code § 425.16(e). Here, Beasley argues only that its publication was in connection with a public issue. Beasley cannot meet its burden to establish this and the motion should be denied.

Even if the Court finds that Beasley did meet its burden to invoke the anti-SLAPP law, Hogan would prevail on the second step. In federal court, an anti-SLAPP motion, like Beasley's, that attacks the complaint's legal sufficiency is evaluated as a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Planned Parenthood Fed'n of Am. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th Cir. 2018). As shown in Hogan's opposition to Beasley's separate Rule 12(b)(6) motion, all of Hogan's claims against Beasley are adequately pleaded.

A. Beasley's false statements were not connected to issues of public interest.

Beasley's story was not about the Super Bowl or Chung's injury. It teased these topics but had nothing new to say about them. Beasley's story was about a private fan's comments to another private fan. Hogan's claim is based on Beasley's false statements about those private comments. This is not a matter of public interest. Beasley cannot meet its burden to establish that its acts giving rise to the claim were in connection with a public issue.

Earlier this year, the California Supreme Court clarified the analysis for categorizing an issue as public or private under the anti-SLAPP law. *Rand Res., LLC, v. City of Carson*, 6 Cal. 5th 610 (2019). The Court in *Rand* "reject[ed] the proposition that any connection at all—however fleeting or tangential—between the challenged conduct and an issue of public interest would suffice to satisfy the requirements of section 425.16,

subdivision (e)(4)." *Id.* at 625. "At a sufficiently high level of generalization, any conduct can appear rationally related to a broader issue of public importance." *Id.* "What a court scrutinizing the nature of speech in the anti-SLAPP context must focus on is the speech at hand, rather than the prospects that such speech may conceivably have indirect consequences for an issue of public concern." *Id.*

In *Rand*, the City of Carson wanted to attract an NFL team by developing a new football stadium. Carson hired developer Rand Resources as its exclusive negotiator, but then replaced Rand with a rival developer. Rand sued Carson and the rival developer on a variety of theories. *Id.* at 618. Rand based some claims on statements by the defendants relating to "*who* should be responsible for . . . representing the City in the negotiations with the NFL." *Id.* Everyone agreed that the development of an NFL stadium in the City was a matter of public interest. But Rand's claims were not based on statements about "the merits of whether, how, and in what form the stadium should be built." *Id.* at 624. The claims were based on statements about "*who* was representing the City." *Id.* at 624–25. The defendants had failed to show "anything more than the most attenuated connection between the identity of the City's agent and a matter of public importance." *Id.* at 626. A closer connection was required.

Here, Beasley offers evidence that sports, football, and the Super Bowl are topics of widespread public interest," (ECF No. 14 at 7:17–8:5), and that "Chung's injury was the subject of significant media coverage," (ECF No. 14 at 8:6–13). Perhaps so. But Beasley is not being sued for statements about the Super Bowl or Chung's injury. Beasley is being sued for statements about Hogan's private text message. That is the "speech at hand" and the proper focus of scrutiny. Beasley fails to establish that its statements about the private text message were meaningfully connected to a matter of public importance.

Another analogy can be found in *Dyer v. Childress*, 147 Cal. App. 4th 1273 (2007). The film *Reality Bites* addressed topics of widespread public interests, *id.* at 1281, and "was seen by more than 3 million people in theatres, it has been released on

videocassette and DVD, and has been exhibited on television," *id.* at 1276–77. In the movie, Troy Dyers is a "rebellious slacker" portrayed by the actor Ethan Hawke. *Id.* at 1276. In real life, Troy Dyers is a financial consultant who went to school with one of the film makers. "Dyer's name was used as an inside joke because the fictional Troy Dyer was dissimilar to the plaintiff who was 'straight laced, mature, and conservative.'" *Id.* at 1277. Dyer sued for defamation and false light invasion of privacy. The defendants moved to strike under the anti-SLAPP law, arguing the film addressed and was itself a matter of widespread public interest. The court disagreed. When courts determine whether the anti-SLAPP law applies, they "focus on the specific nature of the challenged protected conduct, rather than generalities that might be abstracted from it." *Id.* at 1279. "The 'principal thrust or gravamen' of the claim determines whether section 425.16 applies." *Id.* "[T]he specific dispute concerns the asserted misuse of Dyer's persona." *Id.* at 1280. "Although Reality Bites may address topics of widespread public interest, defendants are unable to draw any connection between those topics and Dyer's defamation and false light claims." *Id.*

Like the movie *Reality Bites*, Beasley's story may have touched on topics of public interest. But even if so, those topics are not the "principal thrust or gravamen" of Hogan's claim. Hogan's claim concerns Beasley's false statements about his private text message. Those specific statements are not connected to issues of public interest.

1. Curiosity in Beasley's false story does not translate to a public interest.

Beasley argues that "'comments,' 'likes,' and 'shares'" in response to its story show that Hogan's private text message was a matter of public interest. (ECF No. 14 at 6:25–7:2.) With its false portrayal, Beasley may have spurred some curiosity in the text message. But this is not enough to qualify as a matter of public interest under the anti-SLAPP law. "[T]he statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest." *Weinberg v. Feisel*, 110 Cal. App. 4th 1122, 1132 (2003). Five "guiding principles" characterize a matter of public interest under the statute:

1. "'[P]ublic interest' does not equate with mere curiosity";
2. "[A] matter of public interest should be something of concern to a substantial number of people," not merely "a matter of concern to the speaker and a relatively small, specific audience";
3. "[T]here should be some degree of closeness between the challenged statements and the asserted public interest";
4. "[T]he focus of the speaker's conduct should be the public interest rather than a mere effort 'to gather ammunition for another round of [private] controversy'";
and,
5. "'[T]hose charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.'"

Id. at 1132–1133.

Under these guiding principles, any interactions with Beasley's false story do not transform Hogan's private text message into a matter of public interest under the anti-SLAPP law. Mere curiosity is not enough. The text message was not "of concern" to anyone but Hogan, Weymouth, and perhaps Chung—a very small, specific audience. No one else was affected. There is no degree of closeness between the text message and Beasley's asserted public interest in sports, football, and the Super Bowl. The focus of Beasley's statements was a private controversy between Hogan, Weymouth, and perhaps Chung, not any public interest in the Super Bowl or Chung's injury. And Beasley's own false publications and broadcasts about Hogan should not be permitted to transform him into a public figure.

Another instructive decision is *Abuemeira v. Stephens,* 246 Cal. App. 4th 1291 (2016). In that case, the defendants videotaped a physical altercation with the plaintiffs and then distributed the video. *Id.* at 1294. The court found that the widespread dissemination of the footage did not trigger protection under Section 425.16(e)(3) or (4) because the defendants "did not present any evidence to establish that [the plaintiffs] were anyone other than 'private, anonymous' parties or that the dispute was anything

other than a private controversy." *Id.* at 1298 (*quoting Weinberg*, 110 Cal. App. 4th at 1132). The court observed: "A video-recording of an unseemly private brawl, no matter how wide its distribution, is far removed from a citizen's constitutional right of petition or free speech involving a public issue." *Id.* at 1294.

Similarly, Beasley publicized a private exchange between two private figures. To generate more curiosity, Beasley falsely depicted the exchange as having been between the Los Angeles Rams and Chung. As in *Abuemeira*, Beasley's own efforts in publicizing this private exchange does not transform it into an issue of public interest. *See also Weinberg*, 110 Cal. App. 4th at 1134 ("The fact that defendant allegedly was able to vilify plaintiff in the eyes of at least some people establishes only that he was at least partially successful in his campaign of vilification; it does not establish that he was acting on a matter of public interest.")

In support of its argument that comments equate to a public interest, Beasley cites *Summit Bank v. Rogers*, 206 Cal. App. 4th 669 (2012). But finding of a public interest in *Summit Bank* was based on much more than just comments. The plaintiff was Summit Bank, a publicly traded company and subject of widespread public interest. *Id.* at 694. The Bank alleged that a former employee "made false and libelous statements about the Bank's operations, the integrity of its chief executive officer and founder, the safety of depositors' funds and made false statements about audits and regulatory actions." *Id.* 677. These were obvious issues of public interest: "In light of the recent financial meltdown of some of our country's largest and most trusted financial institutions, the financial stability of our banking system is a legitimate object of constitutionally protected public commentary, discussion, criticism, and opinion." *Id.* The responding comments merely reinforced this finding. *Id.*

Unlike Summit Bank, Hogan is not a public figure. Unlike the former employee in *Summit Bank*, who was sued for statements about the integrity of a publicly-trade bank, Beasley is being sued for false statements about a private text message. The fact that

those false statements attracted some limited attention does not transform them into matters of public interest.

2. Hogan did not inject himself into an issue of public interest.

Stories about private citizens generally are not matters of public interest unless the plaintiff has done something to attract public attention. *E.g, Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 799 (2002) ("By having chosen to participate as a contestant in this show, which generated considerable news coverage, plaintiff voluntarily subjected herself to inevitable scrutiny by the public and the media."); *Ingels v. Westwood One Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1064 (2005) (the plaintiff took the step of calling into a live radio talk show to discuss the host's refusal to air his opinions due to his age); *Albanese*, 218 Cal. App. 4th at 936 (distinguishing *Seelig* on the basis that the plaintiff had "invited public comment"); *Dyer*, 147 Cal. App. 4th at 1281 (distinguishing *Seelig* and *Ingels* on the basis that the plaintiffs "voluntarily thrust themselves into a discussion of public topics").

Here, Hogan did nothing to voluntarily attract public attention and thus assume the risk of connection with an issue of public interest. Instead, Hogan privately traded trash talk with another private fan—just as countless others enjoying the Super Bowl did. This is an insufficient connection to transform Hogan's private text message into an issue of public interest.

Beasley argues that an involuntary connection is enough, citing to *Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1341 (2007). The plaintiff in *Hall* worked as the housekeeper for the legendary actor Marlon Brando. When Brando died, she was named as a beneficiary in his will. By then eighty-two and suffering dementia, she was interviewed for a television program and acted surprised to learn of Brando's death or the will. When the interview was broadcast, she sued for invasion of privacy and related claims. The court held that widespread interest in Brando's personal life made the distribution of his assets an issue of public interest.

This is a very different case. In *Hall*, Brando put his former housekeeper in the spotlight by naming her in his will. As a beneficiary, the housekeeper was inextricably connected to the public interest in Brando's will. And the housekeeper participated in an on-camera interview (voluntarily or not). *Id.* at 1342. Here, Hogan has no relationship with a public figure like Brando. There is nothing like a will to create a necessary relationship between Hogan and any asserted issue of public interest. There was no public interest in Hogan's text message until Beasley published it. And any curiosity in the text message was manufactured by Beasley falsely portrayed it as something it was not.

* * *

Beasley is being sued for disclosing a private figure's private text message and portraying it in a false light. This is not an issue of public interest. Beasley said nothing new about the Super Bowl or about Patrick Chung's injury. And Beasley is not being sued for anything it said on those topics. The speech at hand was not connected to any issue of public interest and thus is not protected by the anti-SLAPP law. For this reason, Beasley's anti-SLAPP motion must be denied

B. Hogan's claims are sufficient to survive a Rule 12(b)(6) motion.

Even if Beasley could establish that its underlying statements were in connection with a public issue, its motion must be denied under the second step of the anti-SLAPP analysis. In California state court, if a movant meets its burden to invoke the anti-SLAPP law, the plaintiff must show a probability of prevailing on the challenged claim. *Id.* The Ninth Circuit recently clarified that in federal court an anti-SLAPP motion is decided under different standards depending on the motion's basis. *Planned Parenthood Fed'n of Am. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th Cir. 2018). "[W]hen an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated." *Id.* at 834. Here, Beasley argues that Hogan's allegations fail to state a claim for defamation as a matter of law. (*E.g.*, ECF No. 14 at 9:10.) Beasley's

motion is thus evaluated under Rule 12(b)(6) standards, and Hogan's burden is satisfied if his claims are legally sufficient.

Because Beasley's motion is treated as a Rule 12(b)(6) motion in this second stage, Hogan incorporates his opposition Beasley's Rule 12(b)(6) motion by reference as though fully set forth here.

C. If Beasley's motion is treated as a Rule 56 motion, Hogan requests time to conduct discovery and supplement his opposition.

In contrast, "[w]hen an anti-SLAPP motion to strike challenges the factual sufficiency of a claim, then the Federal Rule of Civil Procedure 56 standard will apply." Beasley does not argue that Hogan lacks factual support for his claims. While Beasley does submit evidence, it does so to meet its own burden in the first step by showing that Super Bowl is a matter of public interest. Beasley's arguments on the merits refer exclusively to the allegations of the complaint. (*E.g.*, ECF No. 14 at 9:1–15:27.) Beasley thus does not challenge Hogan's claims on the evidence. If the Court finds otherwise, Hogan asks the Court to allow him time to conduct discovery and supplement his opposition with evidence before making any decision, as required in this Circuit. *See Planned Parenthood Fed'n of Am. v. Ctr. for Med. Progress*, 890 F.3d 828, 835 (9th Cir. 2018).

III. CONCLUSION

For the foregoing reasons, and the reasons stated in Hogan's opposition to the Rule 12(b)(6) motion, Beasley's anti-SLAPP motion must be denied.

DATED: July 1, 2019

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